

(1931) 09 MAD CK 0031
In the Madras High Court

Andiappan Ambalam and Another

APPELLANT

Vs

Subbayya Ambalam and Others

RESPONDENT

Date of Decision : 30-09-1931

Acts Referred:

Citation : AIR 1932 Mad 163 : 136 Ind. Cas. 315 : (1931) 34 LW 919

Hon'ble Judges : Corgenven, J

Bench : Single Bench

Judgement

1. This revision petition has been brought against an order of the Subordinate Judge of Devakottah passed under Order I, Rule 8, of the CPC

allowing the defendants in O. S. No. 80 of 1930, on his file to be sued as representative of a community known as the Karaikkudi Nattars which

comprises, I understand, some 300 pattadars The plaintiff in that suit, now respondent, holds a promissory note for Rs. 25,000 executed by five

persons who, he alleges, were managers appointed by the community and invested with such powers as borrowing and dealing with the common

property, etc Four of these five executants he has impleaded as defendants Nos. 1 to 4. The 5th defendant is said to be the adopted son of the

remaining manager and the 6th defendant is the 5th defendant's natural father, while the 7th defendant is a Receiver in a suit which is simultaneously

proceeding for the partition off common properties. The petitioners before me are the 8th and 9th defendants, members of the Nattar community,

who say that they got themselves impleaded in the suit in the interests of the community and who resist the order now under consideration.

2. The principal argument employed before me is that a suit against representative defendants cannot be brought upon a debt, as it is not possible

to proceed against the common property unless all those who possess an interest in the property are actually made parties to the suit. This no

doubt as a general proposition, is true enough and may be accepted on the authority of an English case, *Walker v. Sur* (1) (1914) 2K.B.930 : 83

L.J.K.B.1188 : 109 L.T.888 : 30T.L.R.171. In that case an action was brought for fees for professional services rendered to an unincorporated

religious society, and as representatives of that society four persons were impleaded as defendants. It was not contended that these four persons

were chosen for any special fitness to represent the society, and partly for that reason and partly because the society's property could not be

proceeded against otherwise than in the presence of all the members of the society, the application was disallowed. I think it is clear that the

decision does not necessarily apply to a case in which managers or trustees or some other persons whom plaintiff alleges had power to bind the

property of the association or community are before the Court. In fact, *Vaughan Williams, L. J.*, expressly bases his decision upon grounds of that

nature, and I gather from what the learned Lord Justice says that if managers of the body had been before the Court he might have taken a

different view as to the application of the corresponding English provision for constituting a representative suit. *Buckley, L. J.*, approaches the

question from the point of view of the accessibility of the property and there again I think that if persons had been before the Court who were

competent, to represent the property, the objections which he took would lose their force. It has been said in *Sahib Thambi v. Humid* 12

Ind.Cas.1006 : 36 M.414 at p. 417 : (1911) 2 M.W.N.534 : 22 M.L.J.109 : 10 M.L.T.515., that "" the general rule of law, undoubtedly, is, that in

suits where one person is allowed to represent others as defendant in a representative capacity any decree passed can bind those others only with

respect to the property of those others which he can in law represent."" Accordingly, I think that the circumstances that the managers or the

representatives are sued in the present case may get over the difficulty with regard to proceeding against the property. The circumstances of the

case more closely resemble those which arose in *Ideal Films Ltd. v. Richards* (1927) 1K.B.374 : 96 L.J.K.B.161 : 136L.T.295 : 70 S.J.1138 : 43

T.L.R.7. That was a suit brought against an un-registered association for articles supplied, and the Committee of the association were made

defendants on behalf of all the members and the trustees were also impleaded as representing the property. The suit accordingly was a representative one so far as the Committee was concerned and it also comprised parties whose presence enabled the property to be proceeded against. The argument used in the present case is that the managers were competent to contact the debt on behalf of the community and were also competent in so doing to bind the property. That has been made the subject of issues in the suit and it is unnecessary and indeed, undesirable for me to express any opinion upon it. It may be that if the managers were so competent there was no need to go further than to sue them. But at the worst, it can only be said that it may not have been necessary to resort to Order I, Rule 8 That is not the same as to say that in the circumstances it could, not be applied. I think that the main objection which is raised by Mr. Patanjali Sastri on behalf of the petitioners, namely the question of the liability of the common property, is one which can only be decided in the suit, and issues have been framed for a complete enquiry in that respect. No substantive rights have been lost by defendants or those whom they represent in allowing a suit to be brought in this form. It is merely a matter of processual expediency. I can accordingly find no sufficient ground to interfere with the lower Court's order and I dismiss the revision petition with, costs.